IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Application No.: 10/542,351 Group: 4161

Filed: August 7, 2006 Examiner: Paul E. Zarek

Confirmation No.: 1426

For: Antibacterial Fab 1 Inhibitors

CERTIFICATE OF MAILING OR TRANSMISSION

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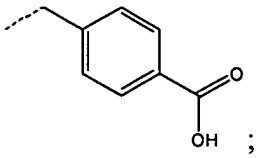
REPLY TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the Restriction Requirement dated April 4, 2008, the claims of Group III (Claims 1-8, 12, 13, 15-17 and 19) drawn to a method of treating a bacterial infection are elected, with traverse, for prosecution. Applicant reserves the right to file a continuing application or take such other appropriate action as deemed necessary to protect the non-elected inventions. Applicant does not hereby abandon or waive any rights in the non-elected inventions.

Responsive to the requirement for an election of species for searching purposes Applicant hereby elects the following as the species:

Compound ii: R1 = thienyl; R2 = thienyl; X1 = CH_2; and R3 = 

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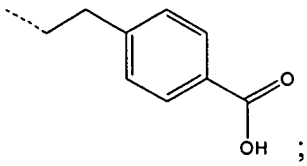
fabI-expressing bacterial infection: *Staphylococcus aureus.*

Compound i: R1 = thienyl; R2 = thienyl; and R3 = 

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It is unclear whether the Examiner is requiring an election from both Compound i and ii or from either Compound i or ii. In the event that it is the latter applications hereby elect Compound ii.

Claims readable on the elected species for Compound i are 1-8. Claims readable on the elected species for Compound ii are 1-6, 12, 13, 15-17 and 19. Claims readable on the elected species for the fabI-expressing bacterial infection are 1-8, 12, 13, 15-17 and 19.

The requirement is being traversed for the reasons set forth in detail below. The Examiner states that the inventions listed as Groups I, II and III do not relate to a single general inventive concept under PCT Rule 13.1 because the inventions lack the same or corresponding special technical features due to prior art (Krauze et al. Euro J Med Chem, 2005, herein referred to as "Krauze 2005", compound 4 in Figure 1), which teaches the compound in claims 21 and 38. However, Krauze 2005 is not prior art to the subject application since it was made available online on May 31, 2005, which is after the filing date of January 16, 2004. Therefore, Applicants request the Restriction Requirement be withdrawn.

However, the Examiner may be referencing compound 4 in Figure 1 of Krauze et al. Euro J Med Chem, 1999, 34, 301 (herein referred to as "Krauze 1999") as listed on PTO-892. Compound 4 in the Krauze 1999 requires a piperidyl substituent on the thiol moiety of the central pyridyl ring. For compound 4 to be embraced by claims 21 or 38, X2 is piperidyl and X1 is a bond. However, in claims 21 and 38 X2 is defined as "an aryl or heteroaryl ring or X2 is triazole, tetrazole, -(CO)NR^aR^b, -(C=NH)NR^aR^b, or -(CS)NR^aR^b." Since none of these moieties encompass piperidyl, compound 4 as disclosed in Krauze is not embraced by the genus of claims 21 or 38. Therefore, Applicants request the Restriction Requirement be withdrawn.

An extension of time to respond to the Restriction Requirement is respectfully requested. A Petition for an Extension of Time and the appropriate fee are being filed concurrently.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By _____

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